

Mark N. Mutterperl  
Jessica S. Parise  
Chehrazade Chemcham  
FULBRIGHT & JAWORSKI L.L.P.  
666 Fifth Avenue  
New York, New York 10103  
Tel: (212) 318-3000  
Fax: (212) 318-3400  
*Attorneys for Research In Motion Limited*

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

RESEARCH IN MOTION LIMITED

*Plaintiff,*

-against-

BEYOND CELL INTERNATIONAL,  
SHENZHEN SILVER EAGLE  
ELECTRONIC CO., AMERICAN EAGLE  
BUSINESS INC., JOHN DOES 1-50; and  
XYZ BUSINESSES,

*Defendants.*

CIVIL ACTION NO. 08 CV 03322 (TPG)

FIRST AMENDED COMPLAINT

(JURY TRIAL DEMANDED)

Research In Motion Limited (“RIM”) by its undersigned attorneys for its complaint against defendants Beyond Cell International (“Beyond Cell”), Shenzhen Silver Eagle Electronic Co. (“Shenzhen Silver”), American Eagle Business Inc. (“American Eagle”), John Does 1-50, and XYZ Businesses (collectively “Defendants”) alleges as follows:

## NATURE OF THE ACTION

1. This case involves the manufacture, sale and distribution of counterfeit, infringing, and diluting batteries for RIM's BLACKBERRY handheld device product line. The Defendants' products may pose a risk to the public's health and safety. RIM is the designer, manufacturer and marketer of the world-renowned, high-quality innovative wireless BLACKBERRY handheld devices, including accessories and services related thereto. Beyond

Cell operates a website, [www.beyondcell.com](http://www.beyondcell.com), where it uses RIM's BLACKBERRY trademarks to market and sell the offending batteries. Shenzhen Silver and American Eagle supplied at least some of the offending batteries to Beyond Cell. RIM seeks injunctive and monetary relief against Defendants for: (a) federal trademark counterfeiting under 15 U.S.C. § 1114; (b) federal trademark infringement under § 1114; (c) federal false description and false designation of origin in commerce under 15 U.S.C. § 1125; (d) federal trade dress infringement under 15 U.S.C. § 1125; (e) federal trademark dilution under 15 U.S.C. § 1125; (f) federal trade dress dilution under § 1125; (g) New York dilution of trademark and injury to business reputation under New York General Business Law § 360-l; (h) New York dilution of trade dress under New York General Business Law § 360-l; (i) deceptive trade practices under New York General Business Law § 349; (j) unfair competition under the common law of the State of New York; and (k) unjust enrichment under the laws of the State of New York.

#### JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1338, and 1367 and general principles of ancillary and pendent jurisdiction.

3. This Court has personal jurisdiction over Defendants because they conduct business in the State of New York. At a minimum, Beyond Cell operates an interactive website where Beyond Cell does business with New York residents over the Internet by directing sales and marketing efforts through the Internet to New York residents, accepting merchandise orders from New York residents, and distributing merchandise including the products at issue directly to New York residents in the State of New York. Shenzhen Silver operates in the United States through American Eagle, which is located in New York.

4. Venue is proper in this judicial district under 28 U.S.C. §§ 1391.

PARTIES

5. Research In Motion Ltd. is a corporation organized and existing under the laws of the province of Ontario, Canada, having its principal place of business at 295 Phillip Street, Waterloo, Ontario, Canada N2L 3W8.

6. Upon information and belief, defendant Beyond Cell International is a California corporation, with a principal place of business at 12718 Schabarum Avenue, Irwindale, California 91706.

7. Upon information and belief, Shenzhen Silver Eagle Electronic Co. was and is a corporation formed and existing under the laws of the People's Republic of China, having its principal place of business at America Tiercel Business/Branch Office in Shenzhen, A03 Block, Fenghuang 2nd Industrial Park, Fuyong Town, Bao'an, Shenzhen, China.

8. Upon information and belief, American Eagle Business Inc. was and is a corporation duly organized and existing under the laws of the State of New York, having its principal place of business at 221-28 59<sup>th</sup> Avenue, Bayside, New York 11364.

9. Upon information and belief, Shenzhen Eagle and American Eagle were and are the agent, servants, employees, parents, subsidiaries, and/or co-conspirators of each other, and were and are acting within the scope of such agency or employment, parent ownership, or subsidiary ownership.

10. John Does and XYZ Businesses are individuals and business entities who participated in the manufacture, sale or distribution of the counterfeit, infringing and diluting batteries. The identities of the various John Doe and XYZ Businesses are not presently known.

To the extent their identities become known to RIM, those defendants will be joined and the acts in which they engaged will be pled in an amended complaint.



### RIM'S TRADEMARKS AND TRADE DRESS

11. RIM is a leading designer, manufacturer and marketer of innovative wireless solutions for the worldwide mobile communications market. Through the development of integrated hardware, software and services that support multiple wireless network standards, RIM provides platforms and solutions for seamless access to time-sensitive information including email, telephone, text messaging, Internet and intranet-based applications. RIM technology also enables a broad array of third party developers and manufacturers to enhance their products and services with wireless connectivity to data.

12. RIM's portfolio of award-winning products, services and embedded technologies are used by thousands of organizations throughout the world and include the BLACKBERRY wireless platform and the RIM handheld product line. RIM's handheld BLACKBERRY products are powered by RIM's proprietary batteries.

13. RIM owns numerous trademarks identifying its BLACKBERRY handheld product line and products and services related thereto, including without limitation, the following U.S. federal registrations:

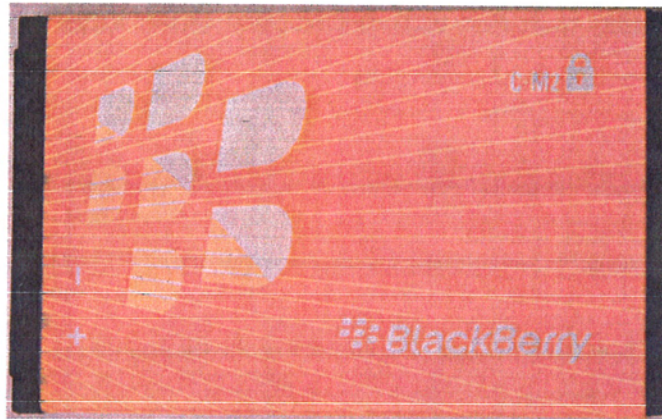
<i>RIM U.S. REGISTRATION/APPLICATION NO.</i>	<i>RIM TRADEMARK</i>
Reg. No. 2036380, 2833837	RESEARCH IN MOTION
Reg. No. 2402763, 2678454	<b>BLACKBERRY</b>
Reg. Nos. 2672464, 2700671, 2844340	BLACKBERRY

Reg. No. 3102687	
Reg. Nos. 3105797, 3240231	

(These marks are collectively referred to herein as the “BLACKBERRY Trademarks”). (True and correct copies of the certificates of registration for the BLACKBERRY Trademarks are attached hereto as Exhibit A).

14. RIM’s proprietary BLACKBERRY batteries include distinctive trade dress including that depicted and described below.

15. An example of the Blackberry 8100 Series C-M2 is:



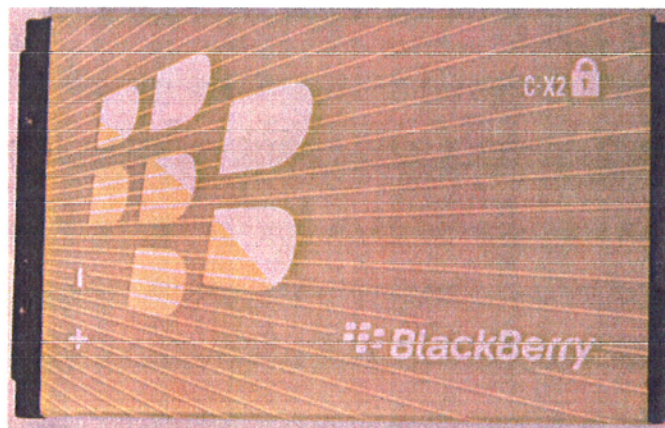
The trade dress for the BlackBerry 8100 Series C-M2 Battery consists of, among other elements, a rectangular battery featuring a label having:

- a rayed background comprised of thick and thin lines, where: the thick lines are of a uniform dark shade of yellow (PANTONE® 130 C) and the thin lines are of a uniform light shade of yellow (PANTONE 115 C); and the lines appear to originate at

a common nucleus off the left side of the battery and diverge across the battery from left to right in an expanding sunburst-style pattern;

- a registered RIM trademark logo on the left side comprised of a pattern of seven semi-circular rectangular shapes (Registration Nos. 3105797 and 3240231) (hereinafter referred to as the “RIM Logo”) where: two of the bottom shapes are shaded in the light shade of yellow (PANTONE 115 C) with thin white lines superimposed; and three of the middle shapes are partially shaded in the light shade of yellow (PANTONE 115 C) with the thin white lines superimposed, and the top two shapes are white;
- the registered RIM trademark on the bottom right-hand side comprising the RIM Logo followed by “BlackBerry” (Registration No. 3102687); and
- the term “C-M2” on the top right hand-side followed by a white silhouette icon of a lock.

16. An example of the Blackberry 8800 Series C-X2 is:

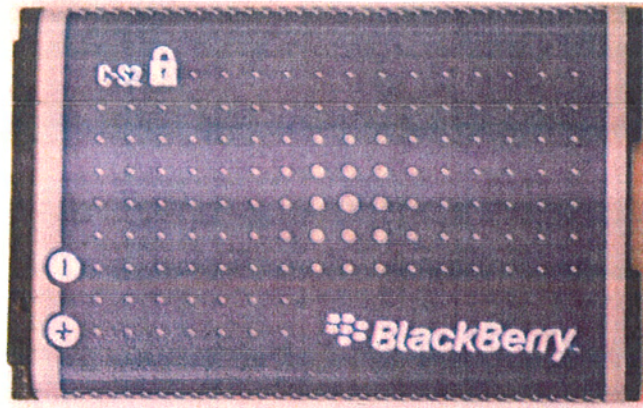




The trade dress for the BlackBerry 8800 Series C-X2 Battery consists of, among other elements, a rectangular battery featuring a label having:

- a rayed background comprised of thick and thin lines, where: the thick lines are of a uniform dark shade of green (PANTONE 584 C) and the thin lines are of a uniform light shade of green (PANTONE 584 C); and the lines appear to originate at a common nucleus off the left side of the battery and diverge across the battery from left to right in an expanding sunburst-style pattern;
- the registered RIM Logo on the left side (Registration Nos. 3105797 and 3240231) where: two of the bottom shapes are shaded in the shade of green (PANTONE 584 C) with thin white lines superimposed; and three of the middle shapes are partially shaded in the light shade of green (PANTONE 584 C) with thin white lines superimposed, and the top two shapes are white;
- the registered RIM trademark on the bottom right-hand side comprising the RIM Logo followed by “BlackBerry” (Registration No. 3102687); and
- the term “C-X2” on the top right hand-side followed by a white silhouette icon of a lock.

17. An example of the Blackberry C-S2 battery is:



The trade dress for the BlackBerry C-S2 battery consists of, among other elements, a rectangular battery featuring a label having:

- a blue (PANTONE 647 C) background covered with an array of grey (PANTONE 877 C METALLIC) dots of an even size except at an area towards the center-right of the battery where the dots increase in size towards a central dot to create the visual effect of a magnified section of the label;
- the code “C-S2” on the top left hand side in white followed by a white silhouette icon of a lock;
- a registered white RIM trademark on the bottom right hand-side comprising a RIM Logo followed by “BlackBerry” (Registration No. 3102687);
- a thick gray (PANTONE 877 C METALLIC) line bordering the left and right sides of the battery; and
- a blue (PANTONE 647 C) half-moon border pattern on the top and bottom sides of the battery framed by four rows of increasingly smaller blue (PANTONE 647 C) dots against a gray (PANTONE 877 C METALLIC) background.



18. The total overall impression of each of these three batteries constitutes the BLACKBERRY Trade Dress ("BLACKBERRY Trade Dress") and distinguishes the RIM BLACKBERRY batteries from the products of others.

19. The BLACKBERRY Trade Dress and BLACKBERRY Trademarks are well known, associated with RIM, and inherently distinctive.

20. With millions of wireless subscribers worldwide, RIM's BLACKBERRY Wireless handheld product line has become one of the most well-known and successful of all wireless handheld product lines in the market.

21. RIM extensively promotes its products throughout the United States. Since FY 2005, in the United States alone, RIM has sold in excess of 16 million BLACKBERRY wireless handheld devices having genuine RIM batteries bearing the BLACKBERRY Trade Dress (including BLACKBERRY Trademarks). Typically, the consumer must install the battery. RIM also sells replacement batteries bearing the BLACKBERRY Trade Dress through accessory sales channels including US carrier partners such as T-Mobile, Verizon, AT&T, Sprint and others as well as directly from RIM at [www.shopblackberry.com](http://www.shopblackberry.com).

22. Since 2004, RIM has spent more than \$ 180 million advertising and promoting the BLACKBERRY Trademarks and Trade Dress in the United States, achieving total worldwide sales for all products bearing the BLACKBERRY Trademarks in excess of \$ 1.8 Billion in FY 2007 in the United States.

23. As a result, RIM's BLACKBERRY brand bearing "BLACKBERRY" Trademarks and BLACKBERRY Trade Dress has become one of the most recognized and respected brands in the industry. The brand's growing recognition and respect was recognized

by the *INDEX OF CANADA'S MOST VALUABLE BRANDS OF 2007*, and in Landor Associates and Stern Stewart's *BRANDECONOMICS® TOP TEN BREAKAWAY BRANDS FOR 2007*.

24. As a result of RIM'S extensive use of the RIM BLACKBERRY Trademarks and Trade Dress, separately and jointly, in this judicial district and elsewhere in the United States, RIM has acquired extremely valuable rights in the BLACKBERRY Trademarks and Trade Dress, and the goodwill associated with each of them. People throughout the world recognize products bearing BLACKBERRY Trademarks and/or Trade Dress as containing high quality products made and distributed by RIM.

25. RIM has engaged and continues to engage in interstate activities designed to promote BLACKBERRY Trademarks and Trade Dress and the business and goodwill associated with each of its marks, trade dress, logos and property in the State of New York and throughout the United States.

DEFENDANTS AND THEIR ACTIVITIES

26. Defendants are improperly profiting from RIM's substantial investment in its BLACKBERRY Trademarks and Trade Dress, and reputation by incorporating, in whole and in part, RIM's BLACKBERRY Trademarks and Trade Dress on hazardous, counterfeit, infringing and diluting batteries to impermissibly misdirect the public to the offending batteries. Thus, Defendants are simultaneously trading off the goodwill RIM has built in the BLACKBERRY Trademarks and Trade Dress, and reducing the value of that goodwill by improperly counterfeiting and associating the RIM name and BLACKBERRY Trademarks and Trade Dress with their own goods. As a result, the value of RIM's BLACKBERRY Trademarks and Trade Dress has been diminished, and consumers are likely to be misled, confused and deceived.

27. Beyond Cell is in the business of marketing and selling cellphone accessories through its interactive website [www.beyondcell.com](http://www.beyondcell.com) ("the Beyond Cell Website"). Beyond Cell's "About Us" webpage explains that:

[Beyond Cell] is proud . . . in an unmatched and unparalleled selection of cellular accessories to take your wireless phone beyond it's capability and appeal. Not to mention, that we also offer the lowest and most competitive prices throughout the United States! *Beyond Cell Int'l* is a direct manufacturer and distributor of cellular accessories. . . . We guarantee the quality of our cellular accessories to meet or exceed most factory standards. Our prices are unbelievably competitive because products are directly manufactured in our factory. Therefore, we can pass the savings on to you! If you are looking for a great bargain and a dependable wholesaler of cellular accessories, then *Beyond Cell Int'l* is the choice for you.

(A true and correct copy of the Beyond Cell "About Us" webpage dated March 31, 2008 is attached hereto as Exhibit B).

28. Among the items offered for sale on the Beyond Cell Website are purported BLACKBERRY batteries described as intended for various models of the RIM BLACKBERRY handheld line of products including the following:

<i>BEYOND CELL BATTERY MODEL</i>	<i>BEYOND CELL BATTERY DESCRIPTION</i>
"BBB6510"	"RIM BlackBerry 6510 7290 7230 7200 7210 7250 7270 7280 7230 7510 7520 7750 7780 Li-ion Battery (Standard 1000 mAh Capacity)"
"BBB8100"	"BlackBerry 8100 Pearl 8120 Pearl 8130 CDMA-Pearl c-m2 Li-on Battery (1000mAh)"
"BBB8300"	"Blackberry RIM Curve 8300 8320 8310 7100g 7100i 7100t 7100v 7100x 7105t 7130c 7130e 7130g 8700c 8700f 8700g 8700r 8700v 8703e 8705g 8707g 8707v Li-ion Battery 1000 mAh"
"BBB8700"	"Blackberry RIM Curve 8300 8320 8310 7100g 7100i 7100t 7100v 7100x 7105t 7130c 7130e 7130g 8700c 8700f 8700g 8700r 8700v 8703e 8705g 8707g 8707v Li-ion Battery 1000 mAh"
"BBB8800"	"BlackBerry 8800 8830 Li-ion 1200mAH"

(hereinafter collectively referred to as the "Purported BLACKBERRY Batteries").

29. Upon information and belief, Shenzhen Silver manufactures and sells the counterfeit BLACKBERRY batteries at issue in this case and sold the purported BLACKBERRY Batteries to Beyond Cell.

30. Upon information and belief, American Eagle is the United States branch of Shenzhen Silver and received funds from Beyond Cell for the purchase of the Purported BLACKBERRY Batteries.

31. Defendants copy the BLACKBERRY Trademarks and Trade Dress on the Beyond Cell Website and Purported Blackberry Batteries to mislead customers into purchasing the Purported BLACKBERRY Batteries.

32. Defendants did not believe or have reasonable grounds to believe that the use of RIM's BLACKBERRY Trademarks and Trade Dress on the Beyond Cell Website constituted a fair or otherwise lawful use.

33. The Beyond Cell Website displays no price for the Purported BLACKBERRY Batteries. To actually place an order, one must open an account with Beyond Cell, provide an estimate of the intended purchase, and then receive a price quote from Beyond Cell for the estimated purchase.

34. Beyond Cell charges \$ 14.00 for its Purported BLACKBERRY batteries, well below the standard retail price for the corresponding genuine BLACKBERRY batteries.

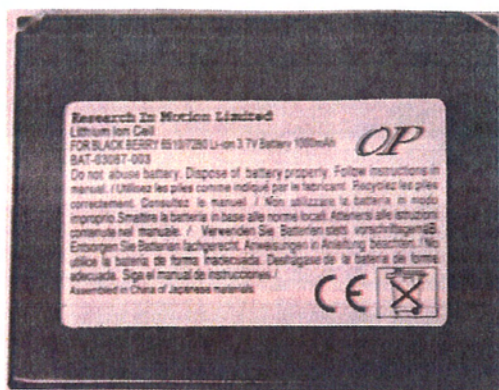
35. RIM's representatives purchased Purported BLACKBERRY Batteries directly from Beyond Cell.

36. RIM determined through an examination of the packaging, labeling, and artwork that the Purported BLACKBERRY Batteries purchased from Beyond Cell are counterfeit and infringe and dilute RIM's BLACKBERRY Trademarks and Trade Dress.

37. RIM confirmed through physical testing that the Purported BLACKBERRY Batteries are not genuine RIM batteries and in fact lack several critical safety features contained in all genuine RIM batteries. The lack of these safety features results in potential hazards including explosions, fire, or leakage of contents including toxic substance.

38. The Beyond Cell BBB6510 battery is not a genuine RIM battery, yet it is labeled in bold print "Research In Motion Limited" at the top left of the battery, states in all capital letters "FOR BLACKBERRY," copies the RIM "Lithium Ion Cell" designation and "BAT-03087-002" designation. A true and correct copy of the battery is:

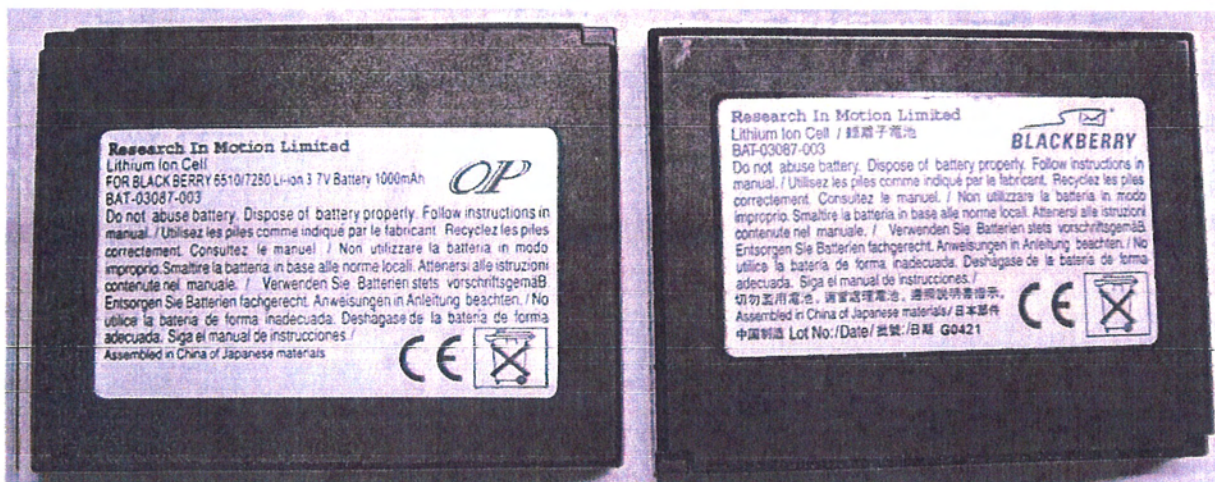




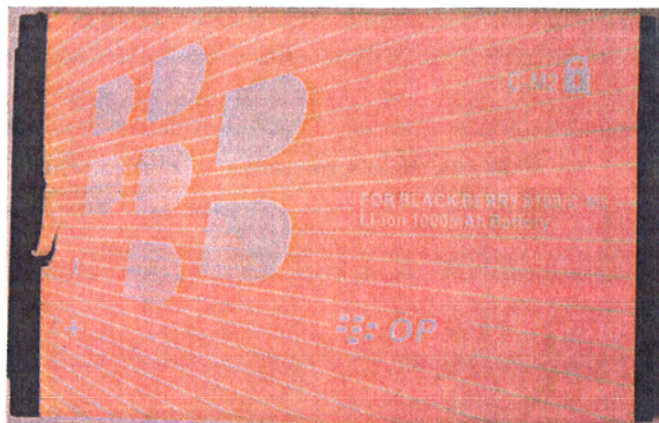
39. A view of RIM and Defendants' batteries side by side illustrates the undeniable similarity and resulting confusion associated therewith:

*COUNTERFEIT "BBB6510" BATTERY*

*ORIGINAL 6510 SERIES BLACKBERRY BATTERY*



40. The Beyond Cell BBB8100 battery is not a genuine RIM battery, yet it looks like one, and is labeled on the back "Research In Motion Limited," has the RIM Logo imprinted on it, and states thereon that the battery is "FOR BLACKBERRY." A true and correct copy of the battery is:



41. The BBB8100 battery also uses the BLACKBERRY Trade Dress. Among other things, it is a rectangular battery featuring a label having:

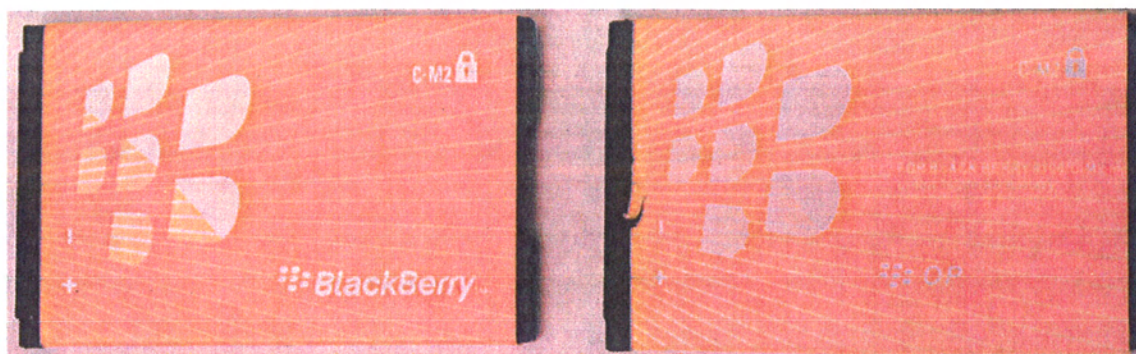
- the rayed background comprised of thick and thin lines, wherein the thick lines are of a uniform dark shade of yellow and the thin lines are of a uniform light shade of yellow;
- the lines on the infringing battery appearing to originate at a common nucleus off the left side of the battery and diverge across the battery from left to right in an expanding sunburst-style pattern;
- the RIM Logo on the left side of the battery shaded;
- a similar mark comprised of the RIM Logo followed by a minor substitution of the word “OP” in place of “BlackBerry” in the bottom right of the battery;
- the “C-M2” code on the top right-hand side followed by the white silhouette icon of a lock found in the original battery.

A view of RIM and Defendants’ batteries side by side illustrates the undeniable similarity and resulting confusion associated therewith:

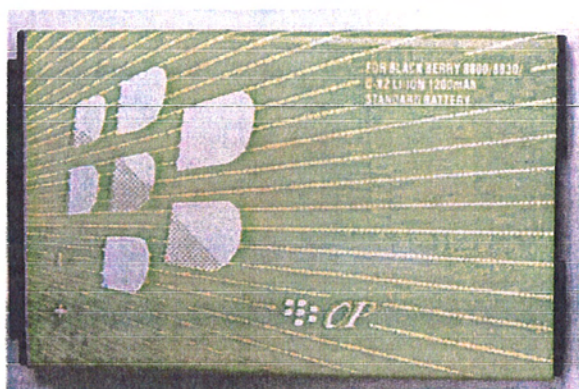


*ORIGINAL 8100 SERIES BLACKBERRY  
BATTERY*

*COUNTERFEIT "BBB8100" BLACKBERRY  
BATTERY*



42. The Beyond Cell BBB8800 battery is not a genuine RIM battery, yet it looks like one, and is labeled on the back "Research In Motion Limited," has the RIM Logo imprinted on it, and states thereon that the battery is "FOR BLACKBERRY." A true and correct copy of this battery is:



43. The BBB8800 battery uses the BLACKBERRY Trade Dress. Among other things, it is a rectangular battery featuring a label having:

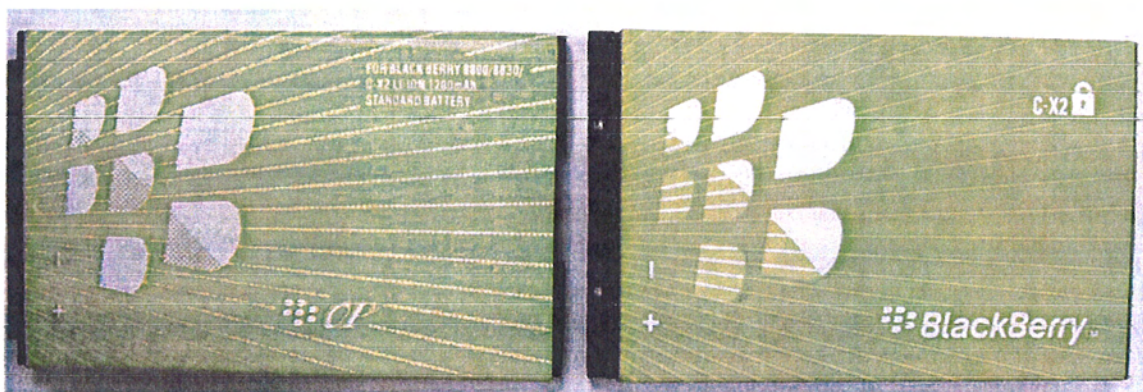
- the rayed background comprised of thick and thin lines, wherein the thick lines are of a uniform dark shade of green and the thin lines are of a uniform light shade of green;

- the lines on the infringing battery appearing to originate at a common nucleus off the left side of the battery and diverge across the battery from left to right in an expanding sunburst-style pattern;
- the RIM Logo on the left side of the battery shaded;
- a similar mark comprised of the RIM Logo followed by a minor substitution of the word “OP” in place of “BlackBerry” in the bottom right of the battery;
- the “C-X2” code on the top right-hand side followed by the white silhouette icon of a lock found in the original battery.

A view of RIM and Defendants’ batteries side by side illustrates the undeniable similarity and resulting confusion associated therewith:

*COUNTERFEIT “BBB8800” BLACKBERRY  
BATTERY*

*ORIGINAL 8800 SERIES BLACKBERRY  
BATTERY*



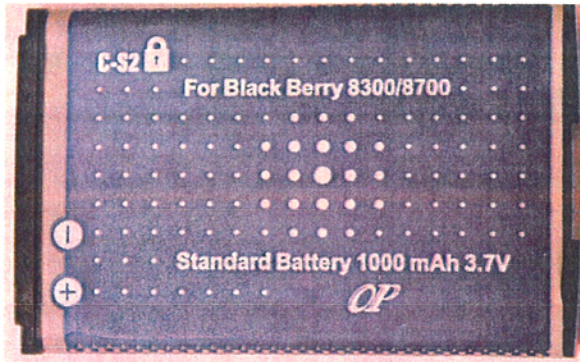
44. The Beyond Cell BBB8300 and BBB8700 batteries are not genuine RIM batteries yet they look like them, and are labeled in the back “Research In Motion Limited,” use the RIM Logo and state that the battery is “for Black Berry.” True and correct copies of the batteries are:

*COUNTERFEIT “BBB8300”*

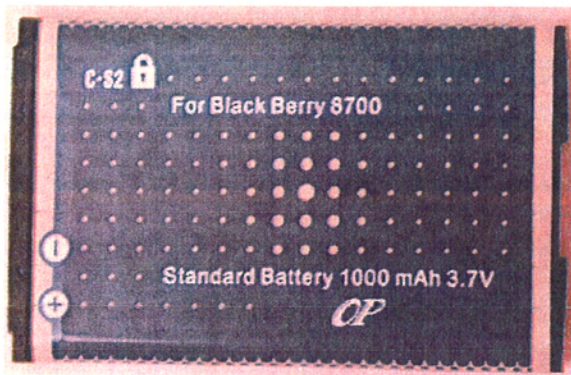
*COUNTERFEIT “BBB8700”*



*BLACKBERRY BATTERY*



*BLACKBERRY BATTERY*



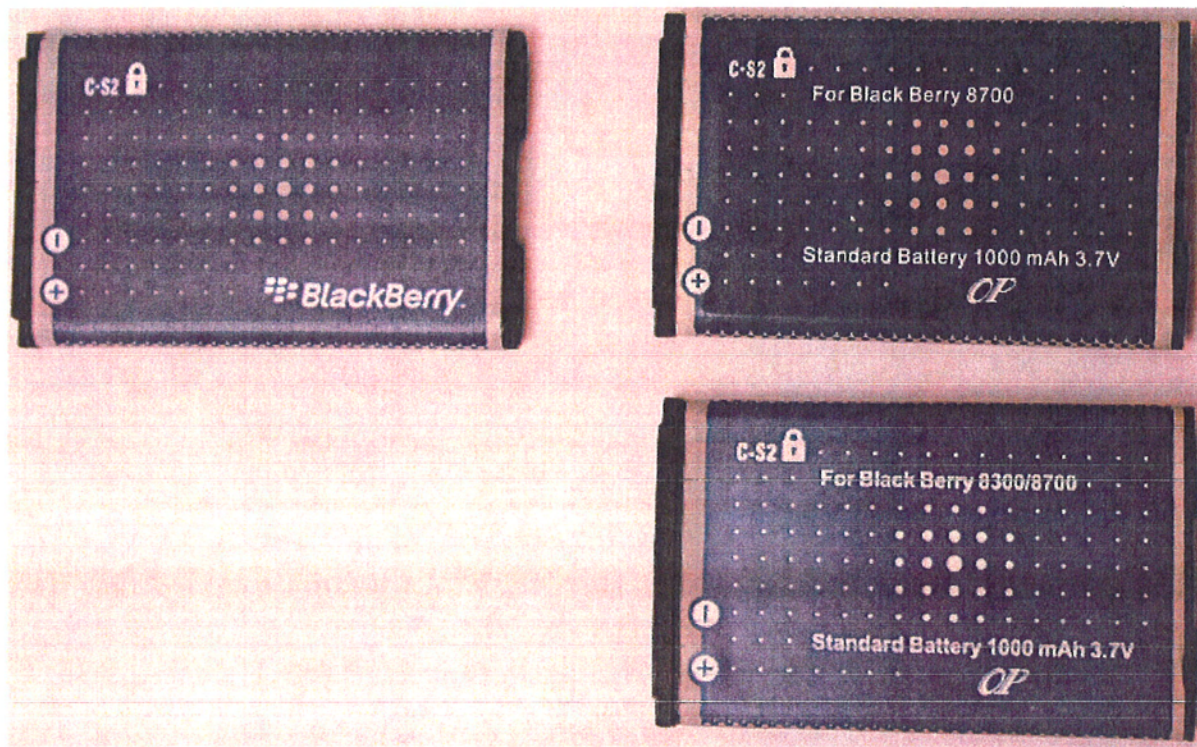
45. The BBB8300 and BBB8700 batteries use the BLACKBERRY Trade Dress. Among other things, they are rectangular batteries featuring a label having:

- virtually the same array of evenly spaced dots against a blue background;
- the dots of an even size except at an area towards the center-right of the battery where the dots increase in size towards a central dot and create the visual effect of a magnified section of the label;
- the "C-S2" code in white followed by a white silhouette icon of a lock on the top left hand side;
- an "OP" mark located in the same bottom-right position as the BLACKBERRY Trademark;
- thick gray lines bordering the right and left sides; and
- half-moon border patterns framed by four rows of increasingly smaller blue dots against a gray background on the top and bottom sides.



A view of RIM and Defendants' batteries side by side illustrates the undeniable similarity and confusion associated therewith:

*ORIGINAL C-S2 BLACKBERRY BATTERY      COUNTERFEIT "BBB8700" BLACKBERRY BATTERY*  
*COUNTERFEIT "BBB8300" BLACKBERRY BATTERY*



46. Defendants, without authorization or license from RIM, have knowingly and willfully used, reproduced and/or copied RIM's BLACKBERRY Trademarks, Trade Dress, and products in connection with distributing, selling and offering to sell hazardous batteries in interstate commerce which are counterfeit, infringing, and diluting copies of RIM BLACKBERRY batteries.

47. Defendants' conduct is likely to cause confusion in the marketplace as to the source of the goods, deceive the public, and harm and dilute the RIM BLACKBERRY Trademarks and Trade Dress.

48. The Purported BLACKBERRY Batteries are not genuine RIM products. RIM did not manufacture, inspect or package them and did not approve them for sale and/or distribution. Upon information and belief, and particularly based at least on the character of the packaging, the poor quality of the labeling and artwork and the pricing, it is likely that Defendants either knew their Purported BLACKBERRY Batteries were counterfeit or, at a minimum, were willfully blind to the facts and failed to make diligent inquiry.

49. Defendants are not affiliated with or sponsored by RIM and have not been authorized by RIM to sell the batteries at issue, or to use with them any RIM BLACKBERRY Trademark or Trade Dress.

50. Defendants are trading on and receiving the benefit of the goodwill RIM has established in its BLACKBERRY Trademarks and Trade Dress with considerable labor and expense over many years, and to gain acceptance of their goods and services not on their own merit, but on the reputation and goodwill of RIM.

51. Defendants' unauthorized products and sales remove from RIM the ability to control the nature and quality of its goods and places the valuable reputation and goodwill of RIM into the hands of the Defendants, over whom RIM exerts no control.

52. Unless the acts of Defendants are permanently enjoined by this Court, such acts will continue to cause irreparable injury to RIM and to the public for which there is no adequate remedy at law. Upon information and belief, Defendants' acts have been deliberate, willful,

intentional and in bad faith, with full knowledge and in conscious disregard of RIM's rights in the BlackBerry Trademarks and Trade Dress and with an intent to trade on the goodwill RIM has established in the BLACKBERRY Trademarks and Trade Dress.

FIRST CAUSE OF ACTION:  
Federal Trademark Counterfeiting

53. RIM repeats and realleges each and every paragraph set forth above as if fully set forth herein.

54. In violation of 15 U.S.C. § 1114, Defendants' used in commerce, without RIM's consent, either a reproduction, counterfeit, copy or colorable imitation of the BLACKBERRY Trademarks in connection with the sale, offering for sale, distribution, or advertising of counterfeit batteries that is likely to cause confusion, or to cause mistake or to deceive.

55. The acts of Defendants complained of herein constitute trademark counterfeiting.

SECOND CAUSE OF ACTION:  
Federal Trademark Infringement

56. RIM repeats and realleges each and every paragraph set forth above as if fully set forth herein.

57. The acts of Defendants complained of herein constitute trademark infringement in violation of 15 U.S.C. § 1114.

THIRD CAUSE OF ACTION:  
Federal False Description And False Designation Of Origin In Commerce

58. RIM repeats and realleges each and every paragraph set forth above as if fully set forth herein.

59. In violation of 15 U.S.C. § 1125, Defendants used a word, term, name, symbol, or device, or a combination thereof, or a false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which was or is likely to cause confusion, or

to cause mistake, or to deceive as to the affiliation, connection, or association of Defendants with RIM or as to the origin, sponsorship, or approval of the Purported BLACKBERRY Batteries by RIM.

60. The acts of Defendants complained of herein constitute false description and false designation.

FOURTH CAUSE OF ACTION:  
Federal Trade Dress Infringement

61. RIM repeats and realleges each and every paragraph set forth above as if fully set forth herein.

62. In violation of 15 U.S.C. § 1125(a), Defendants use the BLACKBERRY Trade Dress to misrepresent the nature, characteristics, qualities, or origin of their products, in a way that is likely to cause confusion, or to cause mistake, or to deceive.

63. The acts of Defendants complained of herein constitute trade dress infringement.

FIFTH CAUSE OF ACTION:  
Federal Trademark Dilution

64. RIM repeats and realleges each and every paragraph set forth above as if fully set forth herein.

65. RIM's BLACKBERRY Trademarks are famous and distinctive within the meaning of 15 U.S.C. § 1125(c).

66. Defendants began to sell their products at issue after RIM's BLACKBERRY Trademarks became famous.

67. Defendants have diluted and are likely to dilute RIM's BLACKBERRY Trademarks.

68. The acts of Defendants complained of herein constitute trademark dilution.

SIXTH CAUSE OF ACTION:  
Federal Trade Dress Dilution

69. RIM repeats and realleges each and every paragraph set forth above as if fully set forth herein.

70. RIM's BLACKBERRY Trade Dress is famous and distinctive within the meaning of 15 U.S.C. § 1125(c).

71. Defendants began to sell their products at issue after RIM's BLACKBERRY Trade Dress became famous.

72. Defendants have diluted and are likely to dilute RIM's BLACKBERRY Trade Dress.

73. The acts of Defendants complained of herein constitute trademark dilution.

SEVENTH CAUSE OF ACTION:  
New York Dilution Of Trademark And Injury To Business Reputation

74. RIM repeats and realleges each and every paragraph set forth above as if fully set forth herein.

75. RIM's BLACKBERRY Trademarks are distinctive within the meaning of New York General Business Law § 360-l.

76. Defendants have injured and are likely to injure RIM's business reputation and/or Defendants have diluted and are likely to dilute the distinctive quality of a mark or trade name owned by RIM.

77. The acts of Defendants complained of herein constitute dilution of RIM's BLACKBERRY Trademarks and injury to RIM's business reputation.



EIGHTH CAUSE OF ACTION:  
New York Dilution Of Trade Dress

78. RIM repeats and realleges each and every paragraph set forth above as if fully set forth herein.

79. RIM's BLACKBERRY Trade Dress is distinctive within the meaning of New York General Business Law § 360-1.

80. Defendants have injured and are likely to injure RIM's business reputation and/or Defendants have diluted and are likely to dilute the distinctive quality of a mark or trade name owned by RIM.

81. The acts of Defendants complained of herein constitute dilution of RIM's BLACKBERRY Trade Dress.

NINTH CAUSE OF ACTION:  
New York Deceptive Trade Practices

82. RIM repeats and realleges each and every paragraph set forth above as if fully set forth herein.

83. In violation of New York General Business Law § 349, Defendants are selling, offering for sale and/or distributing their own products unlawfully bearing the BLACKBERRY Trademarks and Trade Dress.

84. The acts of Defendants complained of herein constitute deceptive trade practices.

TENTH CAUSE OF ACTION:  
Common Law Unfair Competition

85. RIM repeats and realleges each and every paragraph set forth above as if fully set forth herein.

86. In violation of the common law of the state of New York and elsewhere, Defendants have unfairly competed with RIM.

ELEVENTH CAUSE OF ACTION:

Unjust Enrichment

87. RIM repeats and realleges each and every paragraph set forth above as if fully set forth herein.

88. By reason of Defendants' above-described unlawful activities, RIM has sustained injury, damage and loss and Defendants have been unjustly enriched.

PRAYER FOR RELIEF

WHEREFORE, RIM prays that:

(a) Defendants, their agents, servants, employees and all persons acting in concert or participating with Defendants, be temporarily, preliminarily and permanently enjoined and restrained from:

(i) using in any manner including without limitation on batteries and any other products and on the Beyond Cell Website the RIM BLACKBERRY Trademarks and Trade Dress, or any trademarks or trade dress confusingly similar thereto, alone or in combination with any word or designs so as to be likely to cause confusion, deception, or mistake in connection with the advertising, offering for sale or sale of any products other than as expressly authorized by RIM in writing;

(ii) passing off, inducing or enabling others to sell or pass off any batteries or other products as a battery or other products produced by or for RIM, which are not RIM's batteries, or not produced under the control and supervision of RIM and approved by RIM for sale;

(iii) committing any acts calculated to cause the public to believe that Defendants' products are those sold under the control and supervision of RIM, or

sponsored or approved by, or in connection with, or guaranteed by, or produced under the control and supervision of RIM;

(iv) further diluting and infringing RIM BLACKBERRY Trademarks and Trade Dress and damaging RIM's goodwill;

(v) otherwise unfairly competing with RIM in the sale, offering for sale or distribution of batteries;

(vi) shipping, delivering, distributing, returning or otherwise disposing of, in any manner, the Purported BLACKBERRY Batteries;

(vii) using any reproduction, counterfeit, copy or colorable imitation of any of the RIM BLACKBERRY Trademarks and Trade Dress in connection with the publicity, promotion, sale or advertising of the products manufactured, received, acquired, imported, shipped, purchased, sold, offered for sale or distributed by Defendants;

(viii) affixing, applying, annexing or using in connection with the sale of any goods, a false description or representation including words or symbols tending to falsely describe or represent such products as being RIM BLACKBERRY batteries and from offering such goods in commerce;

(ix) destroying any records documenting the manufacture, distribution, sale or receipt of the Purported BLACKBERRY Batteries; and

(x) assisting, aiding or abetting any other person or business entity to engage in or perform any of the activities referenced in subparagraphs (i) through (ix) above.

(b) Defendants be required to deliver to RIM any and all products, guarantees, circulars, price lists, labels, signs, prints, packages, wrappers, pouches, receptacles, advertising

matter, promotional and other materials in the possession of Defendants or under their control bearing any BLACKBERRY Trademarks and/or Trade Dress, or each of them, alone or in combination with any other words or used in connection with the advertising, offering for sale or sale of products which are not genuine RIM products, or not made under the authorization and control of RIM.

(c) Defendants, within three (3) days after the entry of service on Defendants of an injunction, whether temporary, preliminary or permanent, be ordered to provide RIM with a complete list of individuals or entities (including names, addresses and other contact information) from whom they have purchased and to whom they have distributed and/or sold all products bearing RIM's BLACKBERRY Trademarks and/or Trade Dress.

(d) Defendants be required to deliver to RIM for destruction the entire inventory of the Purported BLACKBERRY Products.

(e) Defendants, within fifteen (15) days after the entry and service on Defendants of an injunction, whether temporary, preliminary, or permanent, be ordered to file with this Court and serve upon RIM a written report under oath setting forth in detail the manner in which each of the Defendants has complied with this injunction.

(f) RIM recover all damages it has sustained as a result of Defendants' activities and that said damages be trebled.

(g) RIM recover exemplary damages.

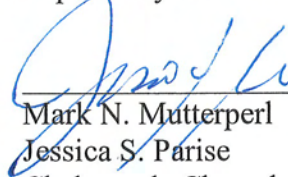
(h) Defendants account for and pay over to RIM profits realized by Defendants by reason of Defendants' unlawful acts, increased as the Court finds to be just under the circumstances of this case.

(i) RIM be awarded reasonable attorneys' fees, costs of this action, and prejudgment and postjudgment interest.

(j) RIM recover such other relief as this Court deems appropriate.

Dated: July 31, 2008

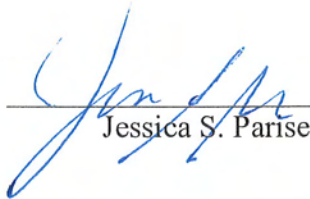
Respectfully submitted,



Mark N. Mutterperl  
Jessica S. Parise  
Chehrazade Chemcham  
FULBRIGHT & JAWORSKI L.L.P.  
666 Fifth Avenue  
New York, New York 10103  
Tel: (212) 318-3000  
Fax: (212) 318-3400  
*Attorneys for Plaintiff*  
*Research In Motion Limited*

JURY DEMAND

Research In Motion Limited demands trial by jury of all issues so triable.



Jessica S. Parise